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U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

APR 28 2005
Date:

IN RE:

Applicant:

PETITION: Application for Status as a Temporary Resident pursuant to Section 210 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker (SAW) was denied by the Director, Western Regional Processing Facility. A subsequent appeal was remanded by the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO). The application was denied again by the Director, Western Service Center. The matter is before the AAO on appeal. The appeal will be dismissed.

In both decisions of denial, the director denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. The decisions were based on evidence adverse to the applicant's claim of employment for [REDACTED]

Although the applicant did not respond to the more recent decision of denial, his appeal taken from the previous decision of denial is still in effect. In that appeal, the applicant reaffirmed his claimed employment for [REDACTED] stating that he did not know the names of the farms on which he worked. The applicant's employment claim and the evidence are addressed below.

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, and must be otherwise admissible under section 210(c) of the Act and not ineligible under 8 C.F.R. 210.3(d). 8 C.F.R. 210.3(a). An applicant has the burden of proving the above by a preponderance of the evidence. 8 C.F.R. 210.3(b).

On the Form I-700 application, the applicant claimed 74 man-days employment for [REDACTED] from September 1985 to November 1985 under [REDACTED] and 55 man-days employment for [REDACTED] from January 1986 to February 1986 at Signal Produce.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and a separate form employment verification letter, both of which were signed by farm labor contractor [REDACTED]

On August 3, 1988, the Director, Western Regional Processing Facility determined that the applicant had not credibly established his claim to eligibility and denied the application. On appeal, the applicant reaffirmed his claimed employment for [REDACTED] stating that he did not know the names of the farms on which he worked. The applicant did not submit any additional evidence in support of his claimed employment.

On December 19, 1990, the LAU remanded the case citing that the applicant had not been apprised of the adverse evidence prior to the denial of his application.

On February 8, 1991, in a Notice of Intent to Deny, the Director, Western Service Center, noted that the Service possessed evidence adverse to the applicant's employment claim. Specifically, in a letter to the Service dated December 4, 1987, the bookkeeper for Signal Produce Company stated that [REDACTED] worked for Signal Produce a maximum of 24 days between March 4, 1986 and March 29, 1986. In addition, the Service received a letter from the payroll secretary for labor contractor [REDACTED] indicating that [REDACTED] worked for [REDACTED] for 14 days between May 27, 1985 and June 17, 1985, and 5 days between February 20, 1986 and February 24, 1986. These letters were accompanied by photocopies of corresponding work records and earnings statements. The applicant was granted 30 days to respond. The record does not contain a response from the applicant.

In addition, on July 20, 1988 [REDACTED] executed a sworn statement in which he confirmed the statements of Signal Produce's bookkeeper and Fernando Flores' payroll secretary, admitted that all I-705 affidavits signed by him were fraudulent and stated that he had no personal knowledge as to whether the applicants in question were eligible for special agricultural worker status.

The Director, Western Service Center, found that the applicant had not overcome the adverse evidence and denied the application on February 14, 1992. The record does not contain any evidence that the applicant responded to that denial notice.

Generally, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and amenability to verification. 8 C.F.R. 210.3(b)(1). Evidence submitted by an applicant will have its sufficiency judged according to its probative value and credibility. 8 C.F.R. 210.3(b)(2). Personal testimony by an applicant which is not corroborated, in whole or in part, by other credible evidence (including testimony by persons other than the applicant) will not serve to meet an applicant's burden of proof. 8 C.F.R. 210.3(b)(3).

There is no mandatory type of documentation required with respect to the applicant's burden of proof; however, the documentation must be credible. All documents submitted must have an appearance of reliability, i.e., if the documents appear to have been forged, or otherwise deceitfully created or obtained, the documents are not credible. United Farm Workers (AFL-CIO) v. INS, Civil No. S-87-1064-JFM (E.D. Cal.).

The fact that [REDACTED] the applicant's alleged employer, admitted that all I-705 affidavits signed by him were fraudulent directly contradicts the applicant's claim. The applicant has not addressed nor overcome such adverse evidence. As such, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

The applicant has failed to credibly establish the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986. Consequently, the applicant is ineligible for adjustment to temporary resident status as a special agricultural worker.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.